

DRAFT MODEL ORDINANCE FOR SITING OF WIRELESS TELECOMMUNICATIONS FACILITIES

- 1. Purpose**
- 2. Authority and Jurisdiction**
- 3. Definitions**
- 4. Approvals Required for Telecommunications Facilities and Support Structures**
- 5. Telecommunications Facilities and Support Structures Permitted by Administrative Approval**
- 6. Telecommunications Facilities and Support Structures Permitted by Special Permit**
- 7. General Standards and Design Requirements**
- 8. Miscellaneous Provisions**
- 9. Existing Telecommunications Facilities and Support Structures**

1. Purpose

The purpose of this ordinance is to ensure that the placement, construction and modification of Wireless Telecommunications Facilities is consistent with the County's land use policies, to minimize the impact of Wireless Telecommunications Facilities, to encourage the collocation of Wireless Telecommunications Facilities on existing structures, to establish a fair and efficient process for review and approval of applications, to assure a comprehensive review of environmental impacts of such facilities, and to protect the health, safety and welfare of the County's citizens – while attempting to ensure access to reliable wireless communications services throughout the County.

2. Authority and Jurisdiction

South Dakota Codified Law 11-2-2 delegates the responsibility to the Board of County Commissioners of each county to adopt and enforce regulations designed for the purpose of promoting health, safety, and general welfare of the county.

3. Definitions

For the purposes of this ordinance, the following terms shall be defined as:

- 1. Accessory Equipment** – Any equipment serving or being used in conjunction with a Telecommunications Facility or Support Structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.

2. **Administrator** – The Zoning Administrator or individual designated by the Board to conduct the Administrative Review referred to in this ordinance
3. **Administrative Approval** – Zoning approval that the Administrator is authorized to grant after Administrative Review.
4. **Administrative Review** – The procedures established in Section 5-5 of this Ordinance.
5. **Antenna** – Any structure or device used to collect or radiate electromagnetic waves for the provision of cellular, paging, personal communications services (PCS) and microwave communications. Such structures and devices include, but are not limited to, the following: directional antennas, such as panels, microwave dishes and satellite dishes; and omnidirectional antennas, such as whips.
6. **Board** – The County Commission, City Commission, or other governmental body governing the district this ordinance refers to.
7. **Collocation** – The act of siting Telecommunications Facilities in the same location on the same Support Structure as other Telecommunications Facilities. Collocation also means locating Telecommunications Facilities on an existing structure (for example: buildings, water tanks, towers, utility poles, etc.) without the need to construct a new support structure.
8. **Carrier on Wheels or Cell on Wheels or COW** – A portable self-contained cell site that can be moved to a location and set up to provide personal wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure.
9. **Major Modifications** – Improvements to existing Telecommunications Facilities or Support Structures that result in a substantial change to the Facility or Structure. Collocation of new Telecommunications Facilities to an existing Support Structure without Replacement of the structure shall not constitute a Major Modification. Major Modifications include, but are not limited to, extending the height of the Support Structure by more than twenty (20) feet or ten percent (10%) of its current height whichever is greater, and the Replacement of the structure.
10. **Minor Modifications** – Improvements to existing Telecommunications Facilities and Support Structures that result in some material change to the Facility or Support Structure but of a level, quality or intensity that is less than a “substantial” change. Such Minor Modifications include, but are not limited to, extending the height of the Support Structure by less than twenty (20) feet or ten percent (10%) of its current height, whichever is greater, and the expansion of the compound area for additional Accessory Equipment.

- 11. Monopole** – A single, freestanding pole-type structure supporting one or more Antenna. For purposes of this Ordinance, a Monopole is not a Tower.
- 12. Ordinary Maintenance** – Ensuring that Telecommunications Facilities and Support Structures are kept in good operating condition. Ordinary Maintenance includes inspections, testing and modifications that maintain functional capacity and aesthetic and structural integrity; for example the strengthening of a Support Structure's foundation or of the Support Structure itself. Ordinary Maintenance includes replacing Antennas and Accessory Equipment on a like-for-like basis within an existing Telecommunications Facility and relocating the Antennas of approved Telecommunications Facilities to different height levels on an existing Monopole or Tower upon which they are currently located. Ordinary Maintenance does not include Minor and Major Modifications.
- 13. Replacement** – Constructing a new Support Structure of proportions and of equal height or such other height as would be allowed under the definition of Minor Modification to a pre-existing Support Structure in order to support a Telecommunications Facility or to accommodate Collocation and removing the pre-existing Support Structure.
- 14. Stealth Telecommunications Facility** – Any Telecommunications Facility that is integrated as an architectural feature of a structure so that the purpose of the Facility for providing wireless services is not readily apparent to a casual observer.
- 15. Support Structure(s)** – A structure designed to support Telecommunications Facilities including, but not limited to, Monopoles, Towers, Utility Poles and other freestanding self-supporting structures.
- 16. Telecommunications Facility(ies)** -- Any unmanned facility established for the purpose of providing wireless transmission of voice, data, images or other information including, but not limited to, cellular telephone service, personal communications service (PCS), and paging service. A Telecommunications Facility can consist of one or more Antennas and Accessory Equipment or one base station.
- 17. Tower** – A lattice-type structure, guyed or freestanding, that supports one or more Antennas.

4. Approvals Required for Telecommunications Facilities and Support Structures

1. Administrative Review

Telecommunications Facilities located on any existing Support Structure shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this ordinance. New Support Structures that are less than sixty (60) feet in height shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance. New Support Structures up to one hundred ninety-nine (199) feet in height shall be permitted in any Industrial District [or your equivalent] after Administrative Review and Administrative Approval in accordance with the standards set forth in this ordinance. Monopoles or replacement poles located in utility easements or rights-of-way shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this ordinance. Stealth Telecommunications Facilities shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this ordinance.

2. Special Permit

Telecommunications Facilities and Support Structures not permitted by Administrative Approval shall be permitted in any district upon the granting of a Special Permit from the Board in accordance with the standards set forth in this ordinance.

3. Exempt

Ordinary Maintenance of existing Telecommunications Facilities and Support Structures, as defined herein, shall be exempt from zoning and permitting requirements. In addition, the following facilities are not subject to the provisions of this ordinance: (1) antennas used by residential households solely for broadcast radio and television reception; (2) satellite antennas used solely for residential or household purposes; (3) COWs placed for a period of not more than one hundred twenty (120) days at any location within the district after a declaration of an emergency or a disaster by the Governor or by the responsible official of the district; and (4) television and AM/FM radio broadcast towers and associated facilities.

5. Telecommunications Facilities and Support Structures Permitted by Administrative Approval

1. Telecommunications Facilities Located on Existing Structures

- (1) Antennas and Accessory Equipment are permitted in all zoning districts when located on any existing structure, including, but not limited to, buildings, water tanks, utility poles, broadcast towers or any existing Support Structure in accordance with the requirements of this Part.
- (2) Antennas and Accessory Equipment may exceed the maximum building height limitations, provided the Antenna and Accessory Equipment are in compliance with the requirements and standards of this Part.
- (3) Each Antenna mounted on existing structures and any Accessory Equipment shall meet the following standards:
 - (a) Omnidirectional or whip Antennas shall not exceed twenty (20) feet in length and not exceed seven (7) inches in diameter and shall be of a color that is identical or similar to the color of the supporting structure to make the Antenna and related Accessory Equipment visually unobtrusive.
 - (b) Directional or panel Antennas shall not exceed ten (10) feet in length and two (2) feet in width and shall be of a color that is identical or similar to the color of the supporting structure to make the Antenna and related Accessory Equipment visually unobtrusive.
 - (c) Cylinder-type Antennas shall not exceed ten (10) feet in length and not exceed twelve (12) inches in diameter and shall be of a color that is identical or similar to the color of the supporting structure to make the Antenna and related Accessory Equipment visually unobtrusive.
 - (d) Satellite and microwave dishes shall not exceed ten (10) feet in diameter. Dish antennas greater than three (3) feet in diameter shall be screened with an appropriate architectural treatment that is compatible with or integral to the architecture of the building to which they are attached. This screening requirement shall not apply to dishes located upon Towers or Monopoles.
 - (e) Other Antenna types not specifically mentioned above shall be permitted if they are not significantly greater in size and will have a visual impact no greater than the Antennas listed above. This provision is specifically included in this Ordinance to allow for future technological advancements in the development of Antennas.
 - (f) Accessory Equipment must comply with Section 7.5.

2. New Support Structures

- (1) New Support Structure less than sixty (60) feet in height shall be permitted in all zoning districts in accordance with the requirements of this Part.
- (2) New Support Structures up to one hundred ninety-nine (199) feet in height shall be permitted in all Industrial Districts [or your equivalent] in accordance with the requirements of this Part. The height of any proposed support structure shall not exceed the minimum height necessary to meet the coverage objectives of the Facility. The setback of the structure shall be governed by the setback requirements of the underlying zone.
- (3) In the case of a monopoles or replacement poles that will support utility lines as well as a Telecommunications Facility shall be permitted within utility easements or rights-of-way, in accordance with requirements of this Part.
 - (a) The utility easement or right-of-way shall be a minimum of one hundred (100) feet in width.
 - (b) The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are eighty (80) feet or greater in height.
 - (c) The height of the Monopole or replacement pole may not exceed by more than thirty (30) feet the height of existing utility support structures.
 - (d) Monopoles and the Accessory Equipment associated there with shall be set back a minimum of fifteen (15) feet from all boundaries of the easement or right-of-way.
 - (e) Single carrier Monopoles may be used within utility easements and rights-of-way due to the height restriction imposed by Subsection (c) above.
 - (f) Poles that use the structure of a utility tower for support are permitted under this Section. Such poles may extend up to twenty (20) feet above the height of the utility tower.
 - (g) Monopoles or replacement poles located on public property or within public rights-of-way that will support public facilities or equipment in addition to Telecommunications Facilities shall be permitted in accordance with requirements of this Part. Examples include, but are not limited to, municipal communication facilities, athletic field lights, traffic lights, street lights, and other types of utility poles in the public right-of-way.

3. Stealth Telecommunications Facilities

- (1) Stealth Telecommunications Facilities shall be permitted in all zoning districts after Administrative Review and Administrative Approval in accordance with the requirements below:
 - (a) Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.
 - (b) The structure utilized to support the Antennas must be allowed within the underlying zone district. Such structures may include, but are not limited to, flagpoles, bell towers, clock towers, crosses, monuments, smoke stacks, parapets, and steeples.
 - (c) Setbacks for the supporting structure shall be governed by the setback requirements of the underlying zoning district.

4. General Standards, Design Requirements, and Miscellaneous Provisions

Unless otherwise specified herein, all Telecommunications Facilities and Support Structures permitted by Administrative Approval are subject to the applicable general standards and design requirements of Section 7 and the provisions of Section 8.

5. Administrative Review Process

- (1) All Administrative Review applications must contain the following:
 - (a) Administrative Review application form signed by applicant
 - (b) Copy of lease or letter of authorization from property owner evidencing applicant's authority to pursue zoning application
 - (c) Zoning Drawings detailing proposed improvements. Drawings must depict improvements related to the requirements listed in this Part, including property boundaries, setbacks, topography, elevation sketch, and dimensions of improvements.
 - (d) In the case of a new Support Structure:
 - i. Statement documenting why collocation cannot meet the applicant's requirements. Such statement may include such technical information and other justifications as are necessary to document the reasons why collocation is not a viable option.
 - ii. A list of all existing structures considered as alternatives to the proposed location. The applicant shall provide a written explanation why the

alternatives considered were either unacceptable or infeasible due to technical, physical, or financial reasons. If an existing tower or monopole is listed among the alternatives, applicant must specifically address why the modification of such structure is not a viable option.

- (e) Administrative Review application fee. Applications for new Support Structures with proposed Telecommunications Facilities shall be considered together as one application requiring only a single application fee.

(2) Procedure

- (a) Within ten (10) business days of the receipt of an application for Administrative Review, the Administrator shall either: (1) inform the Applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements; or (2) schedule an Administrative Review meeting with the Applicant within thirty (30) days of the receipt of a complete application. This meeting is not a public hearing.
- (b) An applicant that receives notice of an incomplete application may submit additional documentation to complete the application. An applicant's failure to complete the application within sixty (60) business days after receipt of written notice shall constitute a withdrawal without prejudice of the application. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.
- (c) The Administrative Review meeting will be conducted to confirm that the proposed application is consistent with this Ordinance. The Administrator must issue a written decision granting or denying the request within fifteen (15) days of the meeting unless an extension of time is agreed to by the Applicant. Failure to issue a written decision within (15) days shall constitute a denial of the application. The applicant may appeal such a denial as provided in this Ordinance or applicable State or Federal Law.
- (d) Should the Administrator deny the application, the Administrator shall provide written justification for the denial. The denial must be based on substantial evidence of inconsistencies between the application and this Ordinance.
- (e) Applicant may appeal any decision of the Administrator approving, approving with conditions, or denying an application or deeming an application incomplete, within thirty (30) days to the Board in accordance with this Ordinance.

6. Telecommunications Facilities and Support Structures Permitted by Special Permit

1. Any Telecommunications Facility or Support Structures Not Meeting the Requirements of Section 5 Shall Be Permitted by Special Permit in all Zoning Districts Subject to:

- (1) The submission requirements of Section 6.2 below;
- (2) The applicable standards of Sections 7 and 8 below; and
- (3) The requirements of the special permit general conditions at Code Section _____.
[Insert cross reference to district's code section that establishes general conditions applicable to Special Permits.]

2. Submission Requirements for Special Permit Applications

- (1) All Special Permit applications for Telecommunications Facility and Support Structures must contain the following:
 - (a) Special Permit application form signed by applicant.
 - (b) Copy of lease or letter of authorization from the property owner evidencing applicant's authority to pursue zoning application.
 - (c) Written description and scaled drawings of the proposed Support Structure, including structure height, ground and structure design, and proposed materials.
 - (d) Number and type of proposed Antennas and their height above ground level, including the proposed placement of Antennas on the Support Structure.
 - (e) When locating within a residential area, a written technical and operational analysis of why a Monopole or similar structure at a height of less than one hundred (100) feet cannot be used.
 - (f) Line-of-sight diagram or photo simulation, showing the proposed Support Structure set against the skyline and viewed from at least four (4) directions within the surrounding areas.
 - (g) A statement justifying why Collocation is not feasible. Such statement shall include:
 - i. Such technical information and other justifications as are necessary to document the reasons why collocation is not a viable option.

- ii. A list of all existing structures considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unacceptable or infeasible due to technical, physical, or financial reasons. If an existing tower was listed among the alternatives, applicant must specifically address why the modification of such tower is not a viable option.
- (h) A statement that the proposed Support Structure will be made available for Collocation to other service providers at commercially reasonable rates.
- (i) If required of other Special Permit applications, a property owner list that includes the name, address, and tax parcel information for each parcel entitled to notification of the application.
- (j) Special Permit application fee. Applications for new Support Structures with proposed Telecommunications Facilities shall be considered as one application requiring only a single application fee.

(2) Procedure

- (a) Within ten (10) business days of the receipt of an Application for a Special Permit, the Administrator shall meet with the applicant to confirm that the application is complete or to inform the applicant in writing the specific reasons why the application is incomplete. This review meeting with staff is not a public hearing and is not subject to any public notification requirements.
- (b) If an application is deemed incomplete, an Applicant may submit additional materials to complete the application. An applicant's failure to complete the application within sixty (60) business days after receipt of written notice shall constitute a withdrawal without prejudice of the application. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.
- (c) Once an application is deemed complete, a review meeting shall be held within ten (10) days.
- (d) A complete application for a Special Permit shall be scheduled for a hearing date at this review meeting in accordance with the requirements of this Ordinance.
- (e) The posting of the property and public notification of the application shall be accomplished in the same manner required for any Special Permit application under this Ordinance.

7. General Standards and Design Requirements

1. Design

(1) Monopoles shall be subject to the following:

- (a) Monopoles shall be designed to accommodate at least three (3) telecommunications providers.
- (b) The compound area surrounding the Monopole must be of sufficient size to accommodate Accessory Equipment for at least three (3) telecommunications providers.
- (c) Unless otherwise required by the Federal Communications Commission, the Federal Aviation Administration, or the Board, Monopoles shall have a galvanized silver or gray finish.

(2) Towers shall be subject to the following:

- (a) Towers shall be designed to accommodate at least four (4) telecommunications providers.
- (b) A compound area surrounding the Tower must be of sufficient size to accommodate Accessory Equipment for at least four (4) telecommunications providers.
- (c) Unless otherwise required by the Federal Communications Commission, the Federal Aviation Administration, or the Board, Towers shall have a galvanized silver or gray finish.

(3) Stealth Telecommunications Facilities shall be designed to accommodate the Collocation of other Antennas whenever economically and technically feasible or aesthetically appropriate, as determined by the Board or Administrator.

(4) Upon request of the Applicant, the Board or Administrator may waive the requirement that new Support Structures accommodate the collocation of other service providers if it finds that Collocation at the site is not essential to the public interest, or that the construction of a shorter support structure with fewer Antennas will promote community compatibility.

2. Setbacks

(1) Property Lines.

Unless otherwise stated herein, Monopoles and Towers shall be setback from all property lines a distance equal to their height measured from the base of the structure to its highest point. Other Support Structures shall be governed by the setbacks required by the underlying zoning district.

(2) Residential Dwellings.

Unless otherwise stated herein, Monopoles, Towers and other Support Structures shall be setback from all off-site residential dwellings a distance equal to the height of the structure. There shall be no setback requirement from dwellings located on the same parcel as the proposed structure. Existing or Replacement utility poles shall not be subject to a set back requirement.

(3) Unless otherwise stated herein, all Accessory Equipment shall be setback from all property lines in accordance with the minimum setback requirements in the underlying zoning district. Accessory Equipment associated with an existing or Replacement utility pole shall not be subject to a set back requirement.

(4) The Board or Administrator shall have the authority to reduce or waive any required setback upon the request of the applicant if the Telecommunications Facility or Support Structure will be less visible as a result of the diminished setback. The Board or Administrator must also find that the reduction or waiver of the setback is consistent with the purposes and intent of this Ordinance. The structure must still meet the underlying setback requirements of the zone.

3. Height

(1) In non-residential districts, Support Structures shall not exceed a height of one hundred ninety-nine (199) feet from the base of the structure to the top of the highest point. Any proposed Support Structure shall be designed to be the minimum height needed to meet the service objectives of the applicant.

(2) In residential districts, Support Structures shall not exceed a height equal to one hundred fifty (150) feet from the base of the structure to the top of the highest point. Any proposed Support Structure shall be designed to be the minimum height needed to meet the service objectives of the applicant.

(3) In all districts, the Board shall have the authority to reduce or waive the height restrictions listed in this section upon the request of the applicant and a satisfactory showing of need for a greater height. With its waiver request, the Applicant shall

submit such technical information or other justifications as are necessary to document the need for the additional height to the satisfaction of the Board.

4. Aesthetics

(1) Lighting and Marking.

Telecommunications Facilities or Support Structures shall not be lighted or marked unless required by the Federal Communications Commission or the Federal Aviation Administration (FAA).

(2) Signage.

Signs located at the Telecommunications Facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited.

(3) Landscaping.

In all districts, the Board or Administrator shall have the authority to impose reasonable landscaping requirements surrounding the Accessory Equipment. Required landscaping shall be consistent with surrounding vegetation and shall be maintained by the facility owner. The Board or Administrator may choose to not require landscaping for sites that are not visible from the public right-of-way or adjacent property or in instances where in the judgment of the Board or Administrator, landscaping is not appropriate or necessary.

5. Accessory Equipment, including any buildings, cabinets or shelters, shall be used only to house equipment and other supplies in support of the operation of the Telecommunications Facility or Support Structure. Any equipment not used in direct support of such operation shall not be stored on the site.

(1) An equipment building, shelter or cabinet must not exceed five hundred sixty (560) square feet and twelve (12) feet in height, including the support structure for the equipment building.

(a) Exception to size restriction. A single equipment building or shelter may exceed five hundred sixty (560) square feet if it is located at ground level, is used by more than one Telecommunications provider and does not exceed one thousand five hundred (1500) square feet.

(b) Exception to height restriction. Upon the Applicant's request, the Board or Administrator may waive the height restriction to allow for the stacking of

equipment on top of each other. The Board or Administrator must find that there is a practical necessity for the stacking of the equipment and that any resulting impact on adjoining properties is minimal or may be minimized by the requiring of appropriate screening. The Board or Administrator may also waive the height restriction where a higher support structure is needed to raise the Equipment above a slope or flood plain.

- (2) If the Accessory Equipment is at ground level in a residential zone, the Board or Administrator may require that the building or shelter be faced with brick or other suitable material on all sides and that the compound area be surrounded by landscaping providing a screen of at least three (3) feet in height at installation. The Accessory Equipment must conform to the setback standards of the applicable zone. In the situation of stacked equipment buildings, additional screening/landscaping measures may be required by the Board or Administrator.

8. Miscellaneous Provisions

1. Safety

- (1) Ground-mounted Accessory Equipment and Support Structures shall be secured and enclosed with fence not less than six (6) feet in height, or as deemed appropriate by the Board or Administrator.
- (2) The Board or Administrator may waive the requirement of Subsection (1) above if it is deemed that a fence is not appropriate or needed at the proposed location.

2. Abandonment and Removal

- (1) Abandonment. Any Telecommunications Facility or Support Structure that is not operated for a period of twelve (12) consecutive months shall be considered abandoned.
- (2) Removal. The owner of the Telecommunications Facility or Support Structure shall remove the Facility within six (6) months of its abandonment. The district authority shall ensure and enforce removal by means of its existing regulatory authority.

3. Multiple Uses on a Single Parcel or Lot

Telecommunications Facilities and Support Structures may be located on a parcel containing another principal use on the same site.

9. Existing Telecommunications Facilities and Support Structures

Telecommunications Facilities and Support Structures that were legally permitted on or before the date this Ordinance was enacted shall be considered a permitted and lawful use.

1. Non-Conforming Telecommunications Facility

- (1) Non-conforming Antennas or Accessory Equipment. Ordinary Maintenance may be performed on Non-conforming Antennas and Accessory Equipment.
- (2) Minor Modifications to non-conforming Telecommunications Facilities may be permitted upon the granting of Administrative Approval by the Administrator.
- (3) Major Modifications to non-conforming Telecommunications Facilities may be permitted only upon the granting of Special Permit approval by the Board.

2. Non-Conforming Support Structures

- (1) Ordinary Maintenance may be performed on a Non-conforming Support Structure.
- (2) Collocation of Telecommunications Facilities on an existing non-conforming Support Structure is permitted upon the granting of Administrative Approval by the Administrator.
- (3) Minor Modifications may be made to non-conforming Support Structures to allow for Collocation of Telecommunications Facilities. Such Minor Modifications shall be permitted by Administrative Approval granted by the Administrator.
- (4) Major Modifications may be made to non-conforming Support Structures only upon the granting of Special Permit approval by the Board.